

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA
Plaintiff,

v.

CRIMINAL NO. 17-592 (ADC)

ABEL NORBERTO REYES
Defendant.

SENTENCING MEMORANDUM

Anyone who has struggled with poverty knows how extremely expensive it is to be poor.

- James Baldwin

Abel knows pain. He will tell you so very matter-of-factly. Growing up in a small wooden shack, with his parents and sister, Yari, in Nagua, Dominican Republic meant that he lacked food many times, always wore hand-me-down clothing, and Christmas and birthdays were a luxury his family could not afford. When Abel describes his childhood he lists conditions and obstacles that most of us would associate with poverty. He, however, does not call it “poverty,” and if asked directly he will say his childhood was good. He does not feel sorry for himself and is not one to make excuses; he knows that growing up with scarce resources does not excuse many of his actions. He understands that he made the decisions that lead him to this point.

When he was 12, his mom, Gladys Norberto, died of Lupus. She was 44 years old. His difficult childhood suddenly became much harder to bare. His father, Victor Reyes, was a fisherman, and did everything he could to provide for Abel and his sister.

Abel has worked for as long as he can remember; it was not really a choice. Despite needing the extra income, his father always encouraged him to go to school. He attended his local high school and was hopeful that an education would be his ticket out. Still, the financial pressure to help his poverty-stricken family was too much and Abel was forced to drop out and devote all of his time to work.

BRAVING THE MONA PASSAGE

Its waters are infested with sharks. It is the deepest hole in the Atlantic Ocean; an underwater gravesite for countless men, women, and children. Still, the stories of death and terror that make it out of the Mona Passage do little to deter desperate Dominicans seeking a better life. What some consider a death trap, they consider a lifeline.

In February of 2016, at 23 years of age, Abel made his first, and only, attempt at the American Dream. In the middle of the night he, along with thirty five other migrants, made his way to a desolate Dominican beach, boarded a “yola,” and watched it drift into the Mona Passage. For the next few days he would pray and think of the many obstacles life had thrown his way. He wanted to finish school, but he needed to help his father and sister first. He had heard the stories; he understood the risks. Hysteria is a real problem during these life risking voyages; men, women, and children routinely cry and panic. Being surrounded by water, with no land in sight, is a very overwhelming feeling. The sharks circling the “yola” do not help either. When you are focused on survival, there is little concern for international treaties and invisible borders. This was the most daring decision he ever made.



Abel took these pictures with his nephew, Melvin, before embarking on his trip across the Mona passage

He never made it to Puerto Rico. On February 12, 2016, at around 4:55 p.m. the U.S. Coast Guard intercepted the “yola” he was in. He was taken into custody and charged with Illegal Entry, in violation of 8 USC §1325(a). A few weeks later, he was granted bail, and Abel was faced with a tough decision. Should he stay, and go through the process, or should he flee? He was 23 years old, uneducated, and oblivious to the American criminal justice

system and the seriousness of the situation. He fled. He chose wrong.

Abel lived among us for over a year and half. During that time he worked construction, and odd jobs, and met his first serious girlfriend: Nicole Joaquin Garcia. The couple quickly hit it off and lived together for the seven months preceding his arrest.

On November 15, 2017, Abel was arrested for illegally possessing a gun. He thinks about that day constantly. He explained, that he was scared, and that the post-Hurricane Maria situation on the island was dangerous, to say the least. There were murders and muggings on a daily basis. He was scared, and felt he needed to protect himself. He regrets that decision every day. He wishes he could have done things differently, but there is no going back.

This arrest marked the end of his year and a half rendezvous with perhaps the two most misunderstood and contradictory features of the American experience: the American Dream and the American Criminal Justice system. The former is ever elusive and the latter is in need of repair and perhaps not the paragon of American excellence and democracy.

Although Abel leaves the U.S. after experiencing some of the more negative aspects of our fragile democracy, there is a happy ending. His girlfriend, Nicole, became pregnant during their short time together. Their daughter, Avedalys Norberto Joaquin, was born on June 26, 2018. Abel has yet to meet her, but he is looking forward to a future with her. Nicole, although born in Puerto Rico, is of Dominican decent. Her father still lives in the Dominican Republic, and she intends on moving there, to raise a family with Abel, upon his release.



Avedalys was born on June 26, 2018. Abel will meet her, for the first time, at his sentencing hearing before this Court.

Abel embraced the opportunities that came his way in the United States. He worked every single day he was here, he sent money to his sister and father, in the Dominican Republic, every month, all in hopes of saving for a better future. Still, he recognizes his failures and the mistakes and missed opportunities that have tarnished his time here. His family depended on him and although he was able to help them he has difficulty coping with the pain he has also caused them. Every day he has spent in jail, has caused heartbreak to his father. He knows he has failed him and wants nothing more than an opportunity to right his wrongs.

THE TERMS OF THE PLEA AGREEMENT PROVIDE ADEQUATE PUNISHMENT

Abel has been incarcerated for almost (9) months; the longest time he has ever spent behind bars. On April 10, 2018, Judge Marcos Lopez sentenced Abel to six (6) months imprisonment in case 16-112 (PAD/MEL). His guideline sentencing range was from 0-6 months, but the defense and the government both requested a sentence of six months. This was done because the parties, due to inmate transfers, and mix ups in coordination, were unable to execute what they intended would be a global plea agreement for both cases. The intention was to consolidate both cases, and recommend that the Court sentence Abel to the higher end of his guideline range in 16-112 (PAD/MEL)—0-6 months, and to the lower end of his guideline sentencing range in this case (17-592)—24-30 months, consecutively.

Because the global plea agreement was not executed, Abel now appears before this Court as a Criminal History Category II. Moreover, the Presentence Investigation Report (“PSR”), authored by USPO Annette Acevedo on July 23, 2018, includes a base offense level of 20, and a three level enhancement, pursuant to USSG §3C1.3, an Adjustment for Obstruction of Justice. The PSR, thus, recommends a Total Adjusted Offense Level of 23, and a Total Offense level of 20. This increased his guideline sentencing range to 37-46 months.

While not a miscalculation, these were enhancements purposely not included in the Plea Agreement between the parties. The government agreed that the guideline range applicable to a total offense level of 17, was sufficient punishment for Abel.

Abel, therefore, respectfully requests the court take this into consideration and sentence him in accordance with the Plea Agreement he entered into on May 7, 2018. If the Court does so, Abel will be imprisoned for a total of 33 months (taking into account the

sentence would be run consecutively to 16-112). This is more than enough time for someone who had never been imprisoned before, and who's only prior contact with the criminal justice system was an arrest and conviction for Illegal Entry.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties of record.

RESPECTFULLY SUBMITTED.

At San Juan, Puerto Rico, July 26, 2018.

**ERIC A. VOS, ESQ.
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